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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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Analysis of Enrolled Senate Bills 405 and 459

Topic: Construction Lien
Sponsor: Senators Garcia and Basham
Co-Sponsors: Bernero (SB 405) and Prusi, Switalski, Scott, and Clarke (SB 459)
Committee: Senate Economic Development, Small Business & Regulatory Reform
House Commerce

Date Introduced: April 21, 2005 (SB 405) and May 4, 2005 (SB 459)

Date Enrolled: December 13, 2006 (SB 459) and December 14, 2006 (SB 405)

Date of Analysis: December 14, 2006

Position: The Department of Labor & Economic Growth supports the bills.

Problem/Background: The Homeowner's Construction Lien Fund has historically been financed by a \$50 assessment of builders and certain contractor and trades licensees. A reassessment is triggered when the Fund's balance dips below \$1 million. The initial assessment in 1980 lasted for many years, but by the late 1990's the Fund was nearly empty and an additional assessment occurred. That assessment was sufficient for only about 7 years, or less than half the time financed by the initial assessment.

The Fund has tended in recent years to be drawn down more quickly because of several factors. First, some suppliers and others who turn to the Fund have become more sophisticated. Over 30 percent of the payouts from the Fund between its inception and early 2003 were to a single company. Second, there were significant legal costs associated with defending the Fund. Third, there were structural deficiencies in the Fund. The most noteworthy deficiency was a finding by the courts that the Fund was required to pay time-price differential. A significant portion of payouts from the Fund have been the result of credit that under ordinary circumstances might not have been extended but for the existence of the Fund.

The current funding mechanism results in irregular and very unpopular assessments of licensees. Many licensees do not pay promptly and do so ultimately only because it becomes a condition of license renewal.

Description of Bill: The bill requires documentation that the homeowner has paid the contractor. A supplier providing material or equipment to a contractor or subcontractor whose project is the subject of claim must document that it has taken the actions listed in the bill before extending credit. Payment of a time-price differential or finance charge would be limited to 90 days after the claim of lien is recorded. The department would be required to maintain a website

listing the name and license number of contractors and qualifying officers whose failure to pay contractors or subcontractors resulted in a payout from the Fund.

Senate Bill 459 also limits time-price differential payments to 90 days after the claim. Mechanical contractors are added to the list of covered contractors. [Note: The Forbes Mechanical Contractors Act was not passed until 1984, several years after the Homeowner's Construction Lien Fund was created.] A new section clarifies that a lien recorded by an unlicensed person must be discharged and imposes costs on the contractor. Payments from the Fund are limited for suppliers of material or equipment to certain contractors or subcontractors without obtaining advance payment in full. A new funding mechanism is established. The current \$50 periodic assessments would be replaced by a fee of \$10 per year paid by all licensees. No fee would be required in a year in which the Fund's balance is \$6 million or more. Voluntary memberships in the Fund would be permitted and the fees are the same as for regular members. Each retail location is treated as a separate person for purpose of paying fees. Notification of changes of address is required. The department is required to post on its website the name and license number of the contractor or qualifying officer when the Fund makes a payment.

Summary of Arguments

Pro: The bills will address structural deficiencies in the current Fund and provide a stable source of funding. Suppliers and others extending credit to contractors will now have more incentive to check the credit of their customers because they will no longer be able to count on reimbursement from the Fund for the cost of goods plus interest.

The fees paid by builders and other contractor and trade licensees are a small price to pay for the peace of mind to the homeowner who has paid the contractor. Such a homeowner doesn't have to worry that his or her home will be the subject of a lien.

Con: Collecting from the Fund is not automatic. Since 1982 there have been over 2800 claims totaling over \$40 million, but less than \$7 million has been paid out.

Fiscal/Economic Impact

(a) Department

Budgetary: The only direct budgetary impact is the requirement to post certain information on a Webpage. The cost is expected to be small.

Revenue: The bills will have a significant impact on revenues to the Fund. The \$6 million cap in Senate Bill 459 is higher than the amount of revenue that has typically been in the Fund. Also, adding the cost to licensee fees will result in more stable and predictable funding.

Comments:

(b) State

Budgetary: The bills will have no budgetary impact on the state.

Revenue: The bills will have no impact on state revenues.

Comments:

(c) Local Government

Comments: There is no local government impact.

Other State Departments: The bills also affect the Department of Attorney General.

Any Other Pertinent Information: The Michigan Association of Homebuilders supports the bills. SMACMA and the Michigan Regional Council of Carpenters and Millrights also indicated support for the bill in Senate committee. The department worked with the Michigan Lumber and Building Material Association and agreed to compromise language in several areas.

Administrative Rules Impact: The bills will not require new or revised administrative rules.